



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1129

(Patron – McDonnell)

Date Submitted: 12/16/03

LD #: 04-9485404

Topic: Audiovisual recording of motion pictures

Proposed Change:

This proposal adds § 18.2-187.2 making it a Class 6 felony for any person to operate an audiovisual recording device in a theater or other premises where a motion picture is being exhibited without the consent of the owner or lessee of the premises and the licensor of the motion picture being exhibited. Furthermore, under certain conditions a person suspected of violating this section may be detained and the recording device confiscated. This section shall not apply to any lawfully authorized investigative, law enforcement, protective or intelligence gathering activity by an agent or employee of the Commonwealth or the federal government. The term "audiovisual recording device" means an analog or digital photographic or video camera or other device capable of recording or transmitting a copy of a motion picture or any part thereof.

Under current law, §§ 59.1-41.2, 59.1-41.3 and 59.1-41.4 prohibit the unlawful recording of live concerts and other public performances and the sale, rental or distribution of such unlawfully obtained recordings. Penalties for violations of these sections are described in § 59.1-41.6. Offenses involving a minimum of 65 audiovisual recordings during any 180-day period are punishable by a term of imprisonment of not less than one nor more than three years.

Convictions under these sections are not currently covered by the sentencing guidelines as the primary (most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Data Analysis:

According to the Fiscal Year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, there were no felony convictions for violations of §§ 59.1-41.2, 59.1-41.3, 59.1-41.4 or 59.1-41.6 as the primary offense in a sentencing event.

Impact of Proposed Legislation:

The proposed legislation establishes a new crime that is not specifically defined in the current *Code*. The proposal may have an impact on the bed space needs of the Commonwealth, but the impact cannot be quantified. The databases available to the Commission are insufficient to provide information on the

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

number of new convictions that may result under the proposed legislation. No adjustment to the guidelines would be necessary under the proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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